**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO. 166 OF 1998

M/s. Shree Tirupati Udyog. ..Petitioner.

R.D.Suvarna for the Petitioner.

Mr. Jain i/by S.K. Jain for the Respondent.

**CORAM : A.M. KHANWILKAR, J.**
**DATED : 14/7/2005**

**P.C.:**

1. Heard counsel for the parties. The respondents though served and has entered appearance through advocate, no reply has been filed on behalf of the respondent company. The petitioner's case is that the petitioner had sold, supplied and delivered goods to the respondent company as per requisition of the respondent company. The respondent company accepted the goods so delivered without any demur. At no point of time, the respondent company raised any objection regarding the quality or quantity of the goods so supplied. The total amount payable by the respondent company to the petitioner is stated to be Rs.17,37,421.50ps. As against the said outstanding amount, the respondent company initially made part payment of Rs.2,50,000/-. Subsequently, nine cheques were issued by the respondent company

aggregating to Rs.4,19,780/-. However, the cheques were dishonoured for which criminal case has been instituted by the petitioner against the respondent company. It also appears that, subsequently the respondent company made further payment by way of pay order in the sum of Rs.1,00,000/- and again Rs.45,000/-. The fact remains that the respondent company is still liable to pay sum of Rs.10,42,421.50 ps. towards the principal and Rs.2,22,643/-towards the interest as per agreed rate between the parties. The respondent company has disputed their liability to pay interest. Eventually, statutory notice was given on 24.2.1997. In pursuance to the statutory notice, parties entered into Memorandum of Understanding wherein the respondent company acknowledged its liability to pay aggregate amount of Rs.13,19,997/-. The fact remains that the outstanding amount has not been paid inspite of the statutory notice. No reply has been filed controverting the assertions made in the petition. In that sense, the averments made in the petition have remained uncontroverted. If it is so, the legal presumption that the respondent company is unable to pay its debt remains unrebutted. In such situation, this court has no option but to accept the prayer of the petitioner in terms of prayer

clause (a) and (b). Ordered accordingly.

**(A.M.KHANWILKAR,J.)**